(1) Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

NORMAN G. FLEECE,

Petitioner,

v.

JANICE RHINES, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
DUE PROCESS ERRORS: NEVER HEARD IN FEDERAL COURT

NORMAN G. FLEECE
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TROY, MICHIGAN 48098
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46 pp

QUESTIONS PRESENTED

1. When will Petitioner's right to due process occur?

2. When will a democratic jury be upheld?

Constitutional violation, Amendment I, "Redress of government grievance" has never occured.

Constitutional violation, Amendment IV, "warrantless entree into home office" authorized by Judge Morris and Moiseev allowed warrantless entry into Oakland County office.

Constitutional violation, Amendment VI, "speedy trial denial"

Constitutional violation, Amendment VII, "jury trial for plaintiff"

Constitutional violation, Amendment VIII, "cruel and unusual punishment" exposing plaintiff to further uncivil and criminal acts, denial, excessive; and theft of bail by Oakland County.

Constitutional violation, Amendment IX, the federal authorities have full power: "Gordie Howe Special."

Constitutional violation, Amendment XIV, "denial of life, liberty or pursuit of happiness without due process or equal protection"

3. When will Petitioner's right to a trial be upheld?

4. When will any constitution be dispatched in Oakland County, Michigan police courts?

5. When will Petitioner's right to a jury trial be heard?

6. Does a Federal Court violate a Plaintiff's First Amendment Right to redress a government grievance when the case was never heard?

7. Was 42 U.S.C. § 1983 developed because of state and local abuse?

8. Did the Supreme Court rule nineteen not state special important reasons to qualify for Supreme Court Hearing?

9. Is not Petitioner's loss of business, family, life, liberty, health, and income enough of a reason?

10. Is police brutality and redress of government grievance de novo?

11. Why did court official Langford Morris (DOE), an Oakland County Candidate, disavow a Federal Court's order?

12. Why did both officer Langford Morris (DOE) and officer S. Moiseev (DOE) condone unwarranted acts?

13. Has there not been clear absence of jurisdiction denying federal court claims, speedy trial, denying bail, and exposing disabled plaintiff to further cruel and unusual punishment?

14. When deputy Bowens and Rhines volunteered out of roll call to get Defendant, why did they not get a warrant?

15. If deputy Bowens knew commissioner L. Crooks Patterson who knows U.S. Magistrate S. Pepe?

16. Is it contempt when Defendant's do not acknowledge federal court orders?

17. Is it also contemptuous to say no to corporate affiliations by Oakland County Corporation Council?

PARTIES TO THE PROCEEDING

Petitioner

N.G. Fleece, an individual with no corporate affiliations.

Respondent

Oakland County Police Court Deputy L. Bowens, Mr. and Mrs. Rhines, Ms. J. McCloughlin, Judges E. Langford Morris (Doe) and S. Moiseev (Doe)

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POINT OF INFORMATION:

Adjudicated fact December 4, 1992. No search or arrest warrant, January 1993. No Court notice served, yet Langford Morris (Candidate) charged Petitioner with use of a firearm. Petitioner has never even owned a firearm. September 28, 1993. Moiseev (Candidate) allows Macomb

September 28, 1993. Moiseev (Candidate) allows Macomb County to enter Petitioner's Oakland County office illegally, macing and maming disabled Petitioner's left arm. University of Michigan. Earl Warren Delano stated to Petitioner in 1996, "We've heard what they [Oakland County] has been doing." Yet, Magistrate Pepe claims ignorance? Thrice?

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OPINIONS OF AUTHORITIES AND ARTICLE III JURISDICTION

Boyd v. United States, 116 U.S. 616

The court is to protect against any encroachment of Constitutionally secured liberty.

Miranda v. Arizona, 384 U.S. 436

Where rights secured by the Constitution are included, there can be no rule (law) making or legislating which would abrogate (abolish).

Hurtado v. California, 110 U.S. 516

The State cannot diminish the rights of the people.

Gomez v. Toledo, 100 S.Ct. 1920, 1929 (1980)

"Good Faith" defense in US civil rights suit, 42 U.S.C. 1983 must be proved by Defendant. All Plaintiff need state is:

1. Public official acted unconstitutionally or illegally; constitutional rights were violated or denied, and
2. Plaintiff was injured by act or omission of state officers acting under color of State law, or by private citizens acting in concert with state officers.

See also U.S. v. Price, 86 S.Ct. 1152, 1157

Norton v. Shelby County, 118 U.S. 426

An unconstitutional act is not law, it confers not rights, it imposes no duties, affords no protection, it creates no office, it is in legal contemplation, as inoperative as though it had never been passed.

Gentile v. County of Sparks

U.S. 2nd Circuit found that failure to respond to repeated complaints of police abuse is a basis for finding a municipality liable. Also cited: 954 F 2nd 1470 (9th Cir. 1992)

113 S.Ct. at 1162

Chief Justice Rehnquist wrote the curum

Conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.

Smith v. Wade, 461 U.S. 30, 56 (1983)

Arguable claims in forma pauperis has less stringent standards.

Lawler v. Marshall, 898 F 2nd 1196, 1198

Plead facts sufficient to show legal wrong committed

Haines v. Kenner, 404 U.S. 519 (1972)

Under § 1983 a prisoner need not prove that he suffered physical injury to establish claim

Parrish v. Johnson, 800 F 2nd 600,604-606

Constant due process violation, default judgements, nor 55b never entered. Oakland County has ruined Petitioner's business, family, health, and standing.

Marbury v. Madison, 5 U.S. 137

The Constitution of the United States is the supreme law of the land. Any act that is repugnant to the Constitution is null and void.

MUNICIPAL HISTORICAL PERSPECTIVE

ITEM 1.

The Petitioner's trial had a professional juror from Farmington Hills (a male teacher) who also sat through another case six months later, while peering through a third court case. Jury tampering in Oakland County from May 1995 through November 1995.

ITEM 2.

Judge Langford Morris legislated and amended unacted law to Petitioner's cancerous state.

ITEM 3.

Altered transcripts are verified, for May 1995. Oakland County Judge Morris. These high crimes and misdemeanors have even caused appellant courts misnomered, undocumented dates. U.S. Magistrage S. Pepe has refused to recognize evidence.

ITEM 4.

50 computer pages court documents are falsified and stolen 92-425449-DM. Oakland County, Michigan has always been a haven for white collar crimes and now further uncivil and criminal action. Petitioner and children denied rights to this day.

ITEM 5.

About one year ago, an eleven year old was tried as a thirteen year old adult. The Oakland County Police Court openly sought media attention for this unfortunate killer, including 60 Minutes and every national news agency. One hour north and one month later, a six year old shot and murdered another six year old. In 1983, a shooting incident by a twelve year old, saw Prosecutor L. Crooks Patterson

close probate court door. Multiple March press shootings had just occurred in California.

CONSTITUTIONAL PROVISIO

"Constitution" March 3, 1776; Article III

The right to redress government grievance and to judicial afasonably.

"Declaration of Independence," line 2, word 1, afasonable= "right to discuss judicially."

Life, Liberty, and the Pursuit of Happiness is also the proviso of the Declaration of Independence.

"Whenever any form of government becomes destructive to this end . . . to right themselves by abolishing the forms to which they are accustomed." The county is operating as an independent unconstitutional entity.

Oakland County, Michigan has had the highest conviction rate in the country. When former Chief Judge "Sleepy" Sosnick was interviewed on CKLW am radio, he said, "We're slick."

"Sleepy" has not been pictured "as sober as a judge," nor does his drinking buddy Governor Engler agree with "subjecting trade to reproach." Oakland County's police court does not accept our Constitution as legitimate nor do they believe in Petitioner's rights to any trial or civil procedure.

STATEMENT OF THE CASE

Since 1992, Oakland County Case Nos. 92-42644 and 92-42699 Judge "Sleepy" Sosnick has allowed Oakland County Deputies to invade Petioner's life. Another unwarranted issue on December 4, 1992, deputies Bowens, Rhines, Rhines, and McCloughlin threw Petitioner backwards down a flight of stairs; driving center of spine out left buttocks unconscious for five minutes and under color of law, defendants got worst. Appointee Judge "Snow White" Langford Morris allowed warrantless entree, excessive force, denied Petitioner speedy trial, denied bond to Petitioner, ordered theft of 3 court tapes and 2 tape recorders, and eventually facilitated theft of bond. Petitioner was half naked, half frozen, and present in Oakland county on December 5, 1998, when magistrate Larry Doyle's presence, when magistrate Doyle ordered a "cash bond" for a trial. This cash was part of the $88,500 stolen by deputies one month later. Again Judge Sosnick was pictured on national television, falling asleep during an arraignment of deputies for stealing said cash. Fined deputies $100.00 month.

On September 28, 1993, Judge Moiseev also permitted warrant-less entree into petitioner's Oakland County office by Macomb County Police. Cruel and unusual punishment was exhibited by candidate Moiseev by imprisoning Petitioner.

Again in January 1993 Judge Langford Morris falsely imprisons Petitioner when no due process occurred. Again Petitioner was not only hospitalized and unconscious with a broken back and crushed, disabled arm, but was also denied trial and bail; which eventually was again stolen. Due process violated again. No notice, right to trial or right to be heard. These acts of intimidation have occurred for years; civil jury trial denied time and again.

Oakland County controlled Petitioner's life for over six years. The Oakland County Police and courts are out of control. (See attached medical records of Petitioner, Appendix E at 11a.)

SPIRIT OF THE LAW

Statutes may expire and prosecutors and persecutors against Petitioner have also past, but Petitioner's Constitutional right to a jury trial has not expired, nor has our constitutional way of life.

Criminal prosecution way be handled after transfer of funds and by "others."

Defendants have never ever responded

Timely and further acts of intimidation were facilitated by judge Morris (DOE) and Judge Moiseev (DOE); who legislated, enacted, and amended unenacted law, to the Petitioner's cancerous state. Case No. 94-CV-74868.

Even U.S. Magistrate S. Pepe has a sic and inaccurate sense of justice. Magistrate Pepe has been erroneous before. Federal Case 95-CV-60212 AA. These federal cases are civil; 99-72219, $7,430,000; 94-CV-74868, $5,310,000. Where rules of evidence apply: criminals will be handled by others. Jury trial demanded and denied.

Business is business at 10% a month interest tribute $7,430,000.

The Brits who gave us mad cow disease, the Hundred Years War, racism, and photos of Duchess Fergy checking a Texan's feet for "foot and mouth disease," have contributed

to our country's unconstitutional cancer. Oakland County's Jury Handbook denies civil procedure and our constitution. There is no constitution on 10 miles of courthouse walls.

Oakland County double handles and mishandles court cases. Accordingly, Oakland County's judiciary violated section 8 of the Constitution by appointing their own judges. Mishandling of court cases is witnesses by the six year old gunman from Clio-Montrose that saw thirteen year old multi 60 Minutes TV tape of an eleven year old being tried as a big boy. Oakland County police courts pursued press and more press (refer to March, California shootings). Unfortunately, these constant unconstitutional acts, thefts by Patterson and Morris, and more threats of intimidation against Petitioner have not stopped.

Our fourth President, Madison stated it best when he said, "removal from judiciary whose erroneousness is leading to dissolution." Now Oakland County judges conspirators guild is putting a "nanny" in charge as the new unconstitutional form of "Boss Hog" or "Buford T. Justice." Oakland County police court has as much class as Fergy and as much judicial restraint as Buford T. Justice. Oakland county's police court refuses constitutional doctrine as pertains to anything.

Oakland county's judiciary does not work. It has not, it does not, it will not. I have been allowed to see my children eight times in as many years. Detroit news, March 25, 2001. "Oakland County prosecutor to go after high school children." Ambulance to bus chasers.

"Any act which is repugnant to the Constitution is null and void." Marbury v. Madison.

Petitioner's love for his country is unwavering; the brief's filed with the Sixth Circuit Judiciary and Appellant Court verifie Petitioner's credibility.

This Court must redress a cancerous Oakland County, Michigan Police Court. Constitutional resolve is necessary.

OAKLAND COUNTY CHARACTER HISTORY

Oakland County, Michigan's Police Court has exhibited continual disregard for national customary law, constitutional law, and has been uncivil toward Petitioner. Petitioner has not had a default judgement rule entered May 16, 2000 in U.S. Court, and is forthwith requesting $7,430,000 at 10% a month interest.

Revised $29,720,000 at 10% a month interest tribute offer enclosed. The following Oakland County Police Court officials have invaded Petitioner's life and destroyed Petitioner's future. Judge E. "Sleepy" Sosnick, former chief of circuit condones mishandling of files and churning of cases, et., al.

Judge Sosnick fell asleep on national television while arraigning Oakland County deputies for stealing $88,500 in cash. "Sleepy" allows Deputy Deanna Starnes v. Contractor's Fleece (Oakland County case 92-426994-NO, 426944. Sleepy allowed Starnes to sue Fleece?

Judge F.X. "Dopey" O'Brien: rated in the lowest 10% of Michigan judges out of ninety-six judges surveyed. Did not get Petitioner's signature for divorce, 92-425449-DM, and ex-parted other orders too. U.S. Judge Laplata dismisses Charles Esther Norman G. Doe case v. against "Happy's"

uncle "Dopey." Cen G Doe v. Oakland County, U.S. Court Case 95-CV-60212 AA. Again, no jury and Pepe.

Prima facie law 42 U.S.C. § 1983
"Every person who under color of law" is liable personally and professionally.

Judge S. "Grumpy" Moiseev hates people and allows disabled Petitioner to be further maced and mamed by Macomb County Police in his Oakland County office. September 28, 1993. Det. 6th District Federal Case 96-70311, H. Cohen, Judge
Det. 6th District Federal Case 94-CV-74868, Hon. Judge Woods
Det. 6th District Federal Case 99-72219, Hon. Judge Ed Tarnow

Judge C "Happy" O'Brien ex-partes more actions against N. Geo. Fleece and refuses to allow Petitioner's children Charles and Esther to be with Petitioner's family. Former judge "Dopey" F.X. O'Brien's niece. Denies mail to Petitioner's children. Former Chief Judge "Sleepy" Sosnick allowed four judges to interfere in Oakland County Case 92-425449-DM.
Oakland County Case 92-425449-DM

Judge J. "Bashful" Cooper refused to address and answer Petitioner's divorce case 92-425449-DM. Orders an additional case for Petitioner's ranch. Orders title and mortgage search fees of $2,500 and $2,850, totaling $5,350. Took three and a half hours to find Dr. Kavorkian jury a dictionary. There is a $35 million library one hundred paces from Bashful's chambers. Bashful was afraid to declare tax on her dad's one-half million dollars. Judge E. "Doc" Schweltz and "Bashful" Cooper churn dollars for Oakland

County Case 92-425449-DM. 50 computer pages and Petitioner has yet to receive personal or professional items nor knows its children whereabouts.

Judge "Doc" Schweltz owns a drug clinic, yet never took a science or chemistry class. "Doc" Schweltz also doctored up Langford's "attempt to murder" by releasing a minimum of two years premature. Afraid to come out of his Oakland County office, on motion Wednesday, the only day they work.

TITLE IX

Sno White = Langford Morris Appointee Judge

Ranked lowest of the thirty odd applicants for the country's second wealthiest county judicial seat. Langford Morris is a common thief. At least three tapes and two tape recorders were altered and removed via her orders. Morris legislated and enacted law that was non-existent and facilitated narcotic injections. Men risked their jobs telling Petitioner how Judge Langford Morris, among others, violated the law and it is the court's responsibility to remove such parties from their positions.

Langford's patterns were repeated; multiple thefts, and she participated liberally against Petitioner with a wanton disregard for law; <u>also where are Judge Morris' 1995 tapes of court proceedings?</u>

Title IX Organized Crime Control Act 1970

R.I.C.O. Statute is specifically applicable to Judge Langford Morris. Theft of three tapes and two tape recorders, ongoing and repeated acts of intimidation, legislating

Petitioner's cancerous state, theft of Petitioner's excessive bail, and falsely imprisoning time and again January 1993, etc. Evidence for civil case has unrefuted judicial notice. Produce court tapes from May, 1995, or suffer consequences.

People have risked themselves exposing Snow White culpable also under (18 U.S.C. §§ 1961-1968)

And Petitioner "should be dead with all those carcinomas"
Neil Ahner, M.D. Director of Florida Alternative Care

DUE PROCESS ERROR

Denying Petitioner's right to discuss afeasonable and for a civil jury; democratically civil court violates America's constitutional existence. Further, the due process clause of the fourth and fourteenth amendments have always been taken to guarantee procedural fairness in matters affecting life, liberty, or property. The Bill of Rights as guaranteed in the Constitution is uncompromising and right, as held by the Statue of Liberty. When will Petitioner's protected rights be so guaranteed? Why have the orders of federal judges been denied and why does this (Oakland County) judicial branch of government lack admirable and general qualities? When will my family name and honor return? When will my daughter's virtue or son's self respect return? Why can I not rent an apartment? The privileges and immunities clause of the Fourteenth Amendment is edified as follows: "No state shall make or enforce any law which abides the privileges and immunities of citizens of the United States."

Why did Canada offer Petitioner asylum on January 20, 2000?

FEDERAL RULES

Federal Rule 37c

False and misleading disclosures and uncooperative police courts are reason for granting a hearing.

Federal Rule 41c

No plaintiffs rights or case shall be dismissed.

Cincinnati born 6th Circuit Judge

President William Howard Taft

"None are too powerful to fear the law, and none too weak to be denied its protection."

"Messages and Papers of the Pres. Vol. 15", p. 7366D

Petitioner does not understand how any court can allow anyone to invade Petitioner's life, deny due process and break Petitioner's business, home, health, and family. Bone structure is strongest at age 41, when these uncivil actions took place. Petitioner N.G. Fleece never had a broken bone in his body until December 4, 1992, nor did Petitioner have burns or abrasions to assimilate resistance or obstruction.

President Gerald Ford stated, "Presidents may come and go but principles endure to inspire leaders."

Petitioner also does not understand how undocumented dates and misnumbered occurrences occur. Yet I still love our country and the principles for which we stand: truth, justice, and the American way.

Petitioner had "offered" minimum settlement for Oakland County Police Court's civil inaction; $5 million before more cruel and unusual punishment by candidate Langford Morris and others. "Consideration" of five years expired since default judgment 55b at $7,430,000.

New offer

$29,720,000 at 10% a month interest tribute.

Business is civil;

AUDITERA QUERELA=PARDON IS TO PREINDITE

(Larry, Moe, and Curly Doyle) Larry Doyle was the pre arraignment clerk who stipulated "cash" while Petitioner was half frozen, half naked, and broken. C.P.A. firm Plante Morans Doyle determine an unaudited, accounting of Fleece and Assoc. was $110,000. The other "stooge" is head of Oakland County Republican Party.

1993 U.S. Government 1120 Audit Fleece Assoc.	$350,000
1992 Accounts Receivable Fleece and Assoc.	$135,000
1993 N.G. Fleece Income tax loss	$50,000
loss carry forward to year 2008: tax and cash loss	($41,000)
equivalent	$185,000
N.G. Fleece 1981 Cash earned and income	$100,000
1991 Cash, asset, and earned income	$100,000
81/2 years of denied income at $100,000/yr	$850,000
Oakland County Sheriff paid for a broken arm (1996)	$160,000
L. Petitioner's smashed and disable arm	$80,000
Broken back L-1, L-3, L-5, S-1	$300,000
Cancerous state: Narcotic injection caused back carcinoma resection	$1,350,000
Other current medical and legal bills	$100,000
Total	$5 million

(10% a month interest on court adduced mandate)

Denial of Petitioner's life and deprivation of future livelihood	$2,430 million
Total	$7,430,000.00
(Plus chips and clips) And 10% a month interest	Tribute

ORDER FOR INSURANCE CERT. AND WRIT ON MANDAMUS

Default Judgment 55b $7,430,000 at 10% a moth.

The aforementioned acts of omission have tended to obstruct or interfere with the orderly administration of justice accordingly. All auto, health, hove, life, professional, personal, and motorcycle insurance is to be presented upon appearance to this honorable court; for Oakland County.

Deputy L. Bowens
Deputies Mr. and Mrs. Rhines
Deputy J. McCloughlin
Judge Langford Morris (Doe)
Judge S. Moiseev (Doe)
And

Notice=This shall also serve as notice to foreclosure on any and all properties of Oakland County Corporation
1200 N. Telegraph
Pontiac, MI 48303
10% a month ajudicated monthly fee is also applicable

CONCLUSION

Due process error and certiorari jurisdiction is warranted to correct these errors. The appeal and writ to cert should be granted. Petitioner cannot understand where all this hatred occured. The "Riddler" did not have such hatred when my family turned him in for jury tampering in Kentucky. Petitioner renews his request to have default judgment 55b $7,430,000 entered and mandated 10% a month interest tribute. Referral to O.S.I. and Senate.

"Quid pro quo"

Would Oakland County Police Court officials listed be qualified to civilize Kosovo, Kamchaka, and Korea? Governor Engler sent Michigan National Guard Lt. Col. to Germany, for necessary training to become an adjutant general of Michigan National Guard.

P.S. Who were the two individuals who froze to death in the Oakland County jail, the day before December 4, 1992 and January 1993.

Inmate Charles Woods was one individual Petitioner saved.

Affidavit of Amount Due Upon Application for Default Judgement to Clerk

(F.R.C.P. Rule 55b)

N.G. Fleece v. Oakland County Michigan Police Court
Rhines, Rhines, McCloughlin, Bowens,
Morris doe, Moiseev doe., et.al.,

Appealant Case #00-1385

N.G. Fleece, being first duly sworn says that he is the plaintiff in the above-titled action, that he has read the complaint filed in this action and knows the contents of it, and that it is true of his own knowledge; There is now due by the defendant's, Oakland County PoliceCourt; Deputy Rhines, Rhines, McCloughlin, Bowens and Judge Morris doe, and Judge Moiseev doe; to the plaintiff set forth in the complaint and edified again; Cerified Mail 70993220000331344633 delivered 5-16-2000; and previous docket entree 14 dated 1-21-00 and also so documented; set forth in the complaint $7,430,000 at 10% month interest.

Defendants have been defaulted for failure to appear in this action, and defendant's are not infants or incompentent person's and not in the military service, as appears from affadavid.

(Jurat)_____

"Pleading is sufficient to have cause of action."

Chief Justice WM. Rheinquist
113 S. Ct. at 1162 981 F 2nd

/s/_____
Norman G. Fleece
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4616 Tipton
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"ACTS" 18-22

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[Filed January 26, 2001]

No. 00-1385

NORMAN J. FLEECE,
Plaintiff-Appellant,

v.

JANICE RHINES, DAVID C. RHINES; JILL MCLOCKLIN,
Defendants-Appellees,

JAMES BOWEN,
Defendant.

Eastern District of Michigan. 99-72219.
Woods. 3-7-00.

Before: WELLFORD, RYAN, and SUHRHEINRICH, Circuit Judges.

ORDER

Norman J. Fleece, a pro se Michigan resident, appeals a district court judgment dismissing his civil rights complaint filed pursuant to 42 U.S.C. § 1983. Fleece also raised the state law tort claims of false imprisonment, assault, and battery. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary relief, Fleece sued four Oakland County (Michigan) sheriff's deputies contending that he was unlawfully arrested and assaulted by the defendants. The alleged incident occurred on December 4, 1992. However, the complaint was not filed until May 4, 1999. Upon de novo review of a magistrate judge's report, the district court dismissed the complaint as being barred by the applicable statute of limitations.

In his timely appeal, Fleece's brief is construed as continuing to argue the merits of his complaint.

As the district court dismissed Fleece's complaint under Fed. R. Civ. P. 12(b)(6), the district court's judgment is reviewed de novo. *See Sistrunk v. City of Strongsville,* 99 F.3d 194, 197 (6th Cir. 1996).

Fleece's complaint was barred by the applicable statute of limitations. Fleece alleged in his original complaint that on December 4, 1992, the defendants apprehended him on the basis of an invalid warrant. The defendants allegedly forced their way into Fleece's bedroom and, although he was

undressed, insisted that he leave. Fleece asserted that the defendants assaulted him, forcing him to fall down the interior stairs of his home. Fleece claims that the defendants hit, kicked, and attacked him even though he was completely helpless and offered no resistance.

Fleece filed his complaint against the defendants on December 2, 1994. In September 1996, Judge Denice Langford-Morris of the Oakland County (Michigan) Circuit Court determined in a separate criminal proceeding that Fleece was incompetent to stand trial and ordered him committed to the Department of Mental Health for treatment. On November 20, 1996, the district court sua sponte dismissed Fleece's civil complaint, without prejudice, in light of his incompetency to stand trial. The district court ordered that "at such time as plaintiff is determined and declared competent to stand trial, he may refile his complaint with this Court [and] . . . that the statute of limitations applicable to plaintiff's claim is hereby tolled." After several months of treatment, Fleece was deemed competent to stand trial. He pleaded guilty to a crime in March 1997, and was sentenced to one year of imprisonment. Fleece refiled his complaint with the district court on May 4, 1999, and filed his first amended complaint on May 7, 1999. The defendants argue that because Fleece was deemed competent to stand trial sometime in March 1997, but did not file his current action until May 1999, his claims are time barred under Michigan's applicable statute of limitations.

The district court noted that the events at issue occurred on May 4, 1992. Fleece had until December 4, 1994, to file his state law claims and until December 4, 1995, to file his federal claims. The original complaint was filed two

days before the limitations period had run on the state law claims and one year and two days before the time the federal claims had expired. The court noted in its order of November 20, 1996, dismissing the case that Fleece could refile his complaint once he was declared competent to stand trial. The order also provided that the applicable statute of limitations was tolled. As a precise date in March 1997 when Fleece was declared competent was unknown to the district court, the court gave Fleece the benefit of the doubt and determined that the statute of limitations began to run on April 1, 1997. Because of the tolling, Fleece had only until April 3, 1997, and April 3, 1998, to refile his state and federal claims respectively. However, Fleece did not refile his complaint until May 4, 1999. Because the complaint was untimely, the district court found that Fleece's claims were barred by the applicable statutes of limitations.

Under Michigan law, Fleece's false imprisonment, assault, and battery claims are subject to a two year statute of limitations. *See* Mich. Comp. Law § 600.5805(2). Fleece's § 1983 claim is governed by Michigan's three-year statute of limitations. *See Carroll v. Wilkerson,* 782 F.2d 44, 45 (6th Cir. 1986). The district court's order of November 20, 1996, explicitly states that Fleece may refile his complaint when he is declared competent to stand trial. Further, the court ordered the statute of limitations to be tolled until a determination of Fleece's competency to stand trial was made. Since Fleece was declared competent in March 1997, the court's order tolling the statute of limitations expired. As a result, Fleece's May 4, 1999, complaint was untimely as it was filed beyond the time he had left to file his complaint.

Accordingly, we affirm the district court's judgment. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[Filed June 31, 2000]

No. 99-CV-72219

NORMAN J. FLEECE,
Plaintiff,

vs.

JANICE RHINES, JILL McLOCKLIN, DAVID RHINES and JAMES BOWEN,
Defendants.

HONORABLE GEORGE E. WOODS
HONORABLE STEVEN D. PEPE

REPORT AND RECOMMENDATION

Plaintiff filed a complaint under 42 U.S.C. § 1983, asserting defendants violated his Fourth and Fourteenth Amendment rights. He also asserts two pendant state law claims of false imprisonment and assault and battery. Defendants Janice Rhines, Jill McLocklin and David Rhines

filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6), arguing that the applicable statutes of limitation have expired. Plaintiff filed a response. This matter was referred on November 30, 1999, for report and recommendation under 28 U.S.C. § 636(b)(1)(B). Because the statutes of limitation have run on plaintiff's claims and he has not established all exception to the limitation periods, defendants' motion to dismiss should be granted.

In addition, this Court entered an order on October 27, 1999, for plaintiff to show cause why defendant James Bowen should not be dismissed from this action for failure to prosecute. This matter was also referred for report and recommendation. Plaintiff has not filed any briefs or otherwise attempted to show cause for his failure to prosecute, and therefore the undersigned recommends dismissing defendant Bowen from this action.

I. BACKGROUND

Plaintiff is a resident of Troy, Michigan. All four defendants were Oakland County Sheriff deputies in December 1992.

Plaintiff Fleece alleges in his first amended complaint that on December 4, 1992, defendants apprehended him on the basis of an invalid warrant of which the plaintiff had no notice. Defendants allegedly forced their way into plaintiff's private bedroom, and, although he was undressed, insisted that he immediately leave. Plaintiff asserts they manhandled and assaulted him, forcing him to fall down the interior stairs of his home. Plaintiff claims they began to hit, kick and

otherwise attack him even though he was completely helpless and offering no resistance.

Plaintiff asserts three primary causes of action against defendants. In Count I he raises a Fourth Amendment claim based on his right to be free from unreasonable seizure and illegal arrest and the defendants' use of grossly excessive and unnecessary force. He further maintains that defendants violated his Fourteenth Amendment right to due process of law. In Counts II and III plaintiff raises state law claims of false imprisonment and assault and battery, respectively.

Defendants Janice Rhines, Jill McLocklin and David Rhines filed an answer and affirmative defenses to plaintiff's allegations on June 23, 1999. They later filed a motion to dismiss under Rule 12(b)(6). As their sole basis for dismissal the defendants argue plaintiff's claims are barred by the applicable Michigan statutes of limitations.

Plaintiff filed a complaint against defendants on December 2, 1994, No. 94-CV-74868. On September 18 1996, Judge Denise Langford-Morris, Oakland County Circuit Court, determined in a separate criminal proceeding that plaintiff was incompetent to stand trial and ordered him committed to the Department of Mental Health for treatment. On November 20, 1996, this Court *sun sponte* dismissed plaintiff's civil complaint without prejudice in light of his incompetency to stand trial, and ordered that "[a]t such time as plaintiff is determined and declared competent to stand trial, he may refile his complaint with this Court [and] . . . that the statute of limitations applicable to plaintiff's claim is hereby tolled."

After several months of treatment at the Clinton Valley Center, plaintiff was deemed competent to stand trial and was referred for a hearing. He pled guilty to a crime in Oakland County Circuit Court in March 1997 and was sentenced to one year imprisonment. He re-filed his complaint in this Court on May 4, 1999, and filed his first amended complaint shortly thereafter on May 7, 1999. Defendants argue that because plaintiff was deemed competent to stand trial sometime in March 1997, but did not file his current action until May 1999, his claims are time barred under Michigan's statutes of limitations.

II. ANALYSIS

A. Defendants' Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6)

Under Fed. R. Civ. P. 12(b)(6), a party may move to dismiss an action based on the nonmovant's "failure to state a claim upon which relief can be granted." In deciding a motion to dismiss under Rule 12(b)(6), a court must accept all well-pleaded allegations as true and construe them in the light most favorable to plaintiff. *Zinermon v. Butch,* 494 U.S. 113, 117 (1990); 5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1357, at 304 (2d ed. 1990). *See also Jenkins v. McKeithen,* 395 U.S. 411,421-22 (1969); *Westlake v. Lucas,* 537 F.2d 857 (6th Cir. 1976). A complaint will not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v. Gibson,* 355 U.S. 41,45-46 (1957). A court may decide a motion to dismiss only on the basis of the pleadings. *Song v. City of Elyria, Ohio,*

985 F.2d 840, 842 (6th Cir. 1993). Dismissal is appropriate if the complaint fails to set forth an allegation of a required element of a claim. *Craighead v. E.F. Hutton & Co.*, 899 F.3d 485,489-90 (6th Cir. 1990). If the movant relies on matters outside the pleadings, the Court in its discretion may treat the motion as one for summary judgment under Rule 56(b). Fed. R. Civ. P. 12(b); *see also Greenberg v. The Life Ins. Co. of Va.*, 177 F.3d 507, 514 (6th Cir. 1999).

Prescribed periods of limitation are "statutes of repose established to extinguish rights, justifiable or not, that might otherwise be asserted.' English v. Bousamra, 9 F. Supp.2d 803,807 (W.D. Mich. 1998) (citing *Kavanagh v. Noble,* 332 U.S. 535,539 (1947)). They are "not simply technicalities[, but rather are] fundamental to a well-ordered judicial system." *Id.* (quoting *Board of Regents v. Tomanio,* 446 U.S. 478, 487 (1980)). As such, they should be strictly construed. *Id.*

State statutes of limitation apply in the absence of federal legislation. *UAW, AFL-CIO v. Hoosier Cardinal* Corp., 383 U.S. 696 (1966). Under Michigan Law Plaintiff's claims of false imprisonment and assault and battery have a two-year statute of limitation from the time the claim arose to the filing of the claim. MCL § 600.5805(2). Plaintiff's § 1983 federal claim is governed by torts. *Id.* § 600.5805(8); *Carroll v. Wilkerson,*. 782 F.2d 44, 45 (6th Cir.) (per curiam), *cert. denied,* 479 U.S. 923 (1986); *see also Browning v. Pendleton,* 869 F.2d 989 (6th Cir. 1989); *McLittle v. O'brien,* 974 F. Supp. 635,637 (E.D. Mich. 1997).

Plaintiff's claims arose from defendants alleged beating on December 4, 1992. Therefore, plaintiff had until December 4, 1994, to file his state law claims and until

December 4, 1995, to file his federal claim. He filed his original complaint in this Court on December 2, 1994, two days before the limitation period had run on his state law claims and one year and two days before the period had run on his federal claim. Judge Woods explicitly tolled these limitation periods in his order dismissing plaintiff's original complaint. Judge Woods instructed the plaintiff that upon being "determined and declared competent to stand [criminal] trial, he may refile his complaint with this Court."

Defendant asserts and plaintiff has not challenged that plaintiff was found competent to stand criminal trial sometime in March 1997.[1] Because neither party has provided the specific date in March 1997 that plaintiff was found competent, for purposes of this motion only plaintiff should be given the benefit of calculating the limitation periods from April 1, 1997. Therefore plaintiff would have had to file his state law claims by April 3, 1997, and his federal claim by April 3, 1998, to avoid lapsing of the limitation periods. He did not file his present complaint until May 4, 1999, well beyond these periods. Under MCL §§ 600.5805(2),(8) and the November 20, 1996, order of this Court, plaintiff's claims are therefore barred unless he has pled and shown an exception to the statutes of limitation.

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[1]Plaintiff's counsel does argue that "plaintiff has only recently become competent enough to handle his own affairs, including the refilling [sic] of his lawsuit." He does not, however, challenge defendants' assertion that sometime in March 1997 plaintiff was determined to be competent to stand trial. This was the specific condition set by Judge Woods in his November 20, 1996, order tolling the limitation periods.

In his response to defendants' motion plaintiff asserts the limitation periods have not yet run on his state and federal claims. His counsel argues that plaintiff was not mentally competent until recently and cites to MCL § 600.5851 (misidentified in the brief as MCL § "600.5841"). Michigan provides a grace period for persons suffering from certain disabilities. Persons adjudged as "insane" given one year after the disability is removed to file a claim even though the limitation period has run. MCL § 600.5851(1). Under state law "insanity" means an "unsound deranged condition of the mind barring [the plaintiff] 'from comprehending rights he is otherwise bound to know.'" *Hill v. Clark Equip. Co.*, 42 Mich. App. 405,411 (Mich. Ct. App. 1972) (quoting *Valisano v. Chicago & N.W.R.R. 'Co.*, 247 Mich. 301,304 (Mich. 1929)) (citation omitted); *see also* MCL § 600.5851(2).

It is important to note here that Judge Woods did not make a finding that plaintiff's incompetence to stand criminal trial qualified as "insanity" under MCL § 600.5851. First, under Michigan law § 600.5851 acts as a "grace period" and not a tolling provision. *See Honig v. Liddy,* 199 Mich. App. 1, 3-4 (Mich. Ct. App. 1993). Judge Woods' order did not speak of "grace periods" or MCL § 600.5851(1), but rather stated that plaintiff's claims were "tolled." He permitted plaintiff to refile the claims without paying a second filing fee "[a]t such time as plaintiff is determined and declared competent to stand trial." In the next sentence, Judge Woods "tolled" the statutes of limitation during the period until plaintiff was ruled competent to stand trial for purpose of

refiling the claims in this Court.[2] Judge Woods' order ended the tolling period upon a finding of plaintiff's competency to stand criminal trial in Oakland County Circuit Court. His authorization to refile and his tolling was to be triggered by a specific, clearly identified and unequivocal action that would happen in the Oakland County Circuit Court. He did not tie his authorization to refile to the far more ambiguous standard involving a disability or removal of a disability under MCL § 600.5851. Nor did Judge Woods limit or modify any of plaintiff's rights under that statute. Plaintiff did not appeal or otherwise challenge Judge Woods' November 20, 1996, order. It is therefore clear that the issue of whether plaintiff suffered from a disability under MCL § 600,5851 is separate from whether the specific and clearly defined conditions of Judge Woods' tolling order were satisfied.

As discussed above, plaintiff does not dispute that he was declared competent to stand trial in Oakland County Circuit Court on or about March 1997. Thus, Judge Woods' specific grant of authority to refile ended its tolling provision in March 1997. After the tolling ended, plaintiff had only two days before the limitations period ran on his state claims and one year and two days before it ran on his federal claims. Plaintiff's refiling on May 4, 1999, was not within the scope of authority provided by Judge Woods. This determination leaves unresolved, however, whether plaintiff can avoid the limitations period under MCL § 600.5851.

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[2]The docket shows that the current complaint was filed with a filing fee and it is unclear whether plaintiff is refiling under the limited authorization provided by Judge Woods.

In support of his assertion of a disability under MCL § 600.5851 plaintiff includes medical records to show he suffered from several mental disabilities. In December 1993, Dr. Wladimir Zarski of the Clinton Valley Center diagnosed plaintiff as suffering from adjustment disorder with depressed mood; severe psychological and environmental problems; and a Global Assessment of Functioning ("GAF") score of 40.[3] His prognosis was guarded, but did believe that plaintiff was capable of managing his beneficial funds.

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[3]A GAF score of 40 correlates to some impairment in reality testing or communication (e.g., speech is at times illogical, obscure, or irrelevant) or major impairment in several areas, such as work or school, family relations, judgement, thinking, or mood (e.g., depressed man avoids friends, neglects family, and is unable to work; child frequently beats up younger children, is defiant at home, and is failing at school).

DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS IV at 32 (4th ed. 1994)("DSM-IV")(emphasis omitted).

APPENDIX C

NO SUCH LAWS; LEGISLATED BY LANGFORD MORRIS AGAIN

LANGFORD MORRIS ELEVATED CRIME TO 750.479b, GUN IN COMMISSION FELONY 1/93

IT IS NOW ORDERED AND DETERMINED that the Defendant is incompetent to stand trail pursuant to the provisions of MCL § 330.2020 et seq., as amended.

IT IS NOW ORDERED AND DETERMINED that there is substantial probability that, if provided a course of treatment the defendant will attain competence to stand trial within the limits established by MCL 330.2034, as amended.

APPENDIX D

TREATISE ON CONSTITUTIONAL LAW

There is no judicial immunity for violations of the criminal law:

> Judges who would willfully discriminate on the ground of race or otherwise would willfully deprive the citizen of his constitutional rights . . . must take account of 18 U.S.C.A. § 242. That section provides: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined . . . or imprisoned. . . ."
>
> Whatever may be the case with respect to civil liability generally or civil liability for willful corruption, we have never held that the performance of the duties of judicial, legislative, or executive officers, requires or contemplates the immunization of otherwise criminal deprivations of constitutional rights. On the contrary, the judicially fashioned doctrine of official immunity

does not reach "so fat as to immunize criminal conduct proscribed by an Act of Congress . . ."[37]

A court reporter, and a court reporting service, are not absolutely immune from damages for failure to produce a transcript of a federal criminal trial.[38] In the case that led the Supreme Court to so hold, the court reporter's' procrastination resulted in delay of appellate review for over four years.

If U.S. Magistrate S. Pepe claimed criminal responsibility under 28 U.S.C. 636, is he also a criminal?

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[37]O'Shea v. Littleton, 414 U.S. 488, 503, 94 S. Ct. 669, 679-80, 38, L. Ed.2d 674, 687-88 (1974) (internal citations omitted), quoting Gravel v. United States, 408 U.S. 606, 627, 92 S. Ct. 98, 34 L.Ed.2d 165 (1972).

[38]Antoine v. Byers & Anderson, Inc., 508 U.S. 429, 113 S. Ct. 2167, 124 L. Ed. 2d 391 (1993), on remand 2 F. 3d 335 (9th Cir. 1993).

APPENDIX E

MEDICAL RECORDS OF NORMAN FLEECE

[Filed April 12, 2000]

Claimant: Norman Fleece

Exh. No.	Part No.	Description	No. of Pages
		MEDICAL RECORDS	
1	F	Residual Functional Capacity (RFC) assessment form dated 4/23/96 (Completed by DDS physician)	8
2	F	Psychiatric Review Technique (PRT) form dated 12/5/96 (completed by DDS physician)	9
3	F	Hospital Records for admission on 12/5/92 through discharge on 12/12/92 from Pontiac Osteopathic	13
4	F	Hospital Records for admission on 12/5/92 through discharge on 12/12/92 from Pontiac Osteo	21

5	F	Medical Report dated 9/18/-12/22/92, by Dr. Self	2
6	F	Medical Report dated 1/7/93 & 1/14/93, by Drs. Kim and Seo	10
7	F	Hospital Records 12/21/92 - 1/19/93 from Pontiac Osteo	12
8	F	Medical Report dated 3/5/93-7/6/93, by Dr. Thompson	2
9	F	Emergency/Outpatient Record dated 9/30/93, from Providence	5
10	F	Medical Report dated 10/7/93, by Herbert Mendelson MD	3
11	F	Medical records covering period from12/18/92 to 11/19/93, from Glenn Silberschein D.C.	19
12	F	Medical Report dated 12/13/93, by Richard Scott, DO	5
13	F	Psychiatric Evaluation dated 12/20/93, by Wladimir Zarski, MD	3
14	F	XXXXXXXXXXXXXXXXXXXXX	8
15	F	Medical Report dated 3/5/93-7/1/94, by Dr. Eugene	6
16	F	Medical Report dated 8/18/94-1/12/95, by Mark Haimann	5

17	F	Medical Report dated 1/24/94-10/18/95, by Gerald Moore, MD	8
18	F	Emergency Room Records dated 3/28/96, from Beaumont	14
19	F	Orthopedic Consultative Examination dated 4/1/96, by S. Maitra MD	5
20	F	XXXXXXXXXXXXXXXXX	7
21	F	Hospital Records for admission on 9/23/96 from Clinton Valley	32
22	F	Medical Report dated 10/22/96, by Dr. Hollaway	1
23	F	Medical Report dated 12/5/92-11/2/96, by Dr. William Kohen	2
		Additional subm by rep	
24	F	Records from Assoc. of Brimingham 4/12/94-12/28/95	57
25	F	Beaumont hospital record 3/218/96	2
26	F	Clinton Valley record 9/23/96-3/26/97	6
27	F	Report from Harvey Halberstadt MD 11/10/97	7
28	F	Questionnaires from Etta Landy ASCW, MSWm CSW 2/24/98	8

SUPPLEMENTAL APPENDIX

Supreme Court, U.S.
FILED

001753 APR 18 2001

No. ____

In the Supreme Court of the United States

NORMAN G. FLEECE,

Petitioner,

v.

RHINES, RHINES, MCCLOUGHLIN, BOWENS, MOISEEV (DOE), MORRIS (DOE), OAKLAND COUNTY POLICE COURT,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI DUE PROCESS ERRORS: NEVER HEARD IN FEDERAL COURT CRIMINAL INTENT = PERJURY $29,720,000 CIVIL DAMAGES

PLEASE REVIEW THE LAST PAGE, AND UPON ACCEPTANCE SIGN AND RETURN.

NORMAN G. FLEECE
Petitioner Pro Se
4616 TIPTON
TROY, MICHIGAN 48098
(248) 641-3868

12 pp

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[Filed March 3, 1999]

No. 99-CV-72219-DT

NORMAN J. FLEECE,
Plaintiff,

v.

JANICE RHINES, JILL McLOCKLIN, DAVID RHINES and JAMES BOWEN,
Defendants.

HON. GEORGE E. WOODS

JUDGMENT FOR DEFENDANTS

AT A SESSION of said Court, held in the United States Courthouse, in the City of Detroit, State of Michigan, on the 3rd day of March, 2000.

PRESENT: THE HONORABLE GEORGE E. WOODS United States District Judge

The Court having granted Defendants Janice Rhines, Jill McLocklin and David Rhines' Motion to Dismiss;

IT IS HEREBY ORDERED that judgment is entered for Defendants.

IT IS FURTHER ORDERED that Defendant James Bowen is DISMISSED for lack of prosecution;

IT IS FURTHER ORDERED that Plaintiff's Complaint is DISMISSED in its entirety.

/s/_____
GEORGE E. WOODS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[Filed March 3, 1999]

No. 99-CV-72219-DT

NORMAN J. FLEECE,
Plaintiff,

v.

JANICE RHINES, JILL McLOCKLIN, DAVID RHINES and JAMES BOWEN,
Defendants.

HON. GEORGE E. WOODS

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

AT A SESSION of said Court, held in the United States Courthouse, in the City of Detroit, State of Michigan, on the 3rd day of March, 2000.

PRESENT: THE HONORABLE GEORGE E. WOODS United States District Judge

This matter having come before the Court on Defendants' Motion to Dismiss [Document No. 7];

The Court having reviewed the pleadings submitted herein[1], including Magistrate Judge Pepe's Report and Recommendation, dated January 31, 2000, and Plaintiff's objections to the Magistrate Judge's Report and Recommendation, and the Court being otherwise fully informed in the matter;

IT IS HEREBY ORDERED that Defendant's motion is GRANTED.

I. BACKGROUND

Plaintiff filed a complaint in May 1999, alleging that on December 4, 1992, Defendants Janice Rhines, Jill McLocklin and David Rhines, all Oakland County Sheriff deputies at the time, violated his Fourth Amendment right to be free from unreasonable seizure and that Defendant engaged in excessive force. Plaintiff also raises state law claims of false imprisonment and assault and battery. Defendants subsequently filed a motion to dismiss, asserting that Plaintiff's claims are barred by the applicable Michigan statute

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[1]In addition to the objections filed by Plaintiff's counsel, Plaintiff himself has filed two documents with the Court: one captioned "Suspension of Local Rule" [Document No. 15]; and one captioned "'Response to Magistrate [sic] Report' and Recommendation., [Document No. 18]. These documents play no role in the Court's decisionmaking process, as they do not comply with Fed. R.Civ. P. 11, which requires that "[e]very pleading, written motion, and other paper" be "signed by at least one attorney of record in the attorney's individual name...."

of limitations. Because Plaintiff had not served Defendant James Bowen, this Court entered an order in October 1999 requiring Plaintiff to show cause why his claims against Bowen should not be dismissed for failure to prosecute. The Court referred both these matters to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) (1)(B).

The facts in this case are not in dispute, and the Court adopts the Background statement as recited in the Magistrate Judge's Report and Recommendation.

As noted in the Report and Recommendation, after Plaintiff filed his initial complaint in this matter in December 1994, an Oakland County Circuit Court determined that Plaintiff was incompetent to stand trial in a separate criminal proceeding. This Court subsequently dismissed Plaintiff's civil complaint without prejudice and entered an order authorizing Plaintiff to refile his complaint "[a]t such time as plaintiff is determined and declared competent to stand trial." Order Dismissing Plaintiff's Complaint Without Prejudice.

In March 1997, Plaintiff was declared competent to stand trial. More then two years later, on May 4, 1999, he refiled his complaint in this Court.

Defendants argue in their motion that because Plaintiff was deemed competent to stand trial in March 1997 but did not file his complaint here until May 1999, his claims are barred.

II. STANDARD

A motion to dismiss under Fed. R.Civ. P. 12(b) (6) must be denied "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [their] claim which would entitle [them] to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Taxpayers United for Assessment Cuts v. Austin, 994 F.2d 291, 296 (6th Cir. 1993); In re Delorean Motor Company, 991 F.2d 1236, 1240 (6th Cir. 1993). This Court may neither weigh evidence nor assess the credibility of witnesses, but must view the evidence in the light most favorable to the nonmovant. Meador v. Cabinet for Human Resources, 902 F.2d 474, 475 (6th Cir. 1990). All factual allegations in plaintiff's complaint are deemed true and any ambiguities must be resolved in plaintiff's favor. Jackson v. Richards Medical Co., 961 F.2d 575, 577 (6th Cir. 1992).

III. DISCUSSION

The Magistrate Judge thoroughly reviewed the case law and facts relevant to this motion. The events at issue in Plaintiff's claims occurred on December 4, 1992; and Plaintiff had until December 4, 1994, to file his state law claims and until December 4, 1995, to file his federal claim. Plaintiff filed his original complaint "on December 2, 1994, two days before the limitation period had run on his state law claims and one year and two days before the period had run on his federal claim." Report and Recommendation at 5. The Magistrate Judge then calculated the remaining time, using April 1, 1997, as the starting date because neither party provided the specific date in March 1997 on which Plaintiff was found competent. The Magistrate Judge concluded that

Plaintiff had to file his state law claims by April 3, 1997, and his federal claim by April 3, 1998, to avoid lapsing of the limitation periods and that Plaintiff filed his complaint too late. Id. at 6.

Accordingly, the Magistrate Judge agreed with Defendants that the statute of limitations on Plaintiff's claims had run, and he recommended that their motion be granted. After viewing all of the evidence de novo, this Court agrees. For the reasons that follow, Plaintiff's objections to the Report and Recommendation fail to alter the Court's conclusion.

AGAIN PERJURY

Plaintiff first argues that the Magistrate Judge failed to consider the precise wording of the Order Dismissing Plaintiff's Complaint without Prejudice, entered November 20, 1996. Plaintiff relies on the following language to support his position: "At such time as plaintiff is determined and declared competent to stand trial, he may refile his complaint with this Court." November 20, 1996, Order. According to Plaintiff, "[t]he only medical report of competency obtained with regard to this civil case, was the opinion of Dr. Brian S. Weinstein, D.O., dated November 19, 1998." Plaintiff's Objections at 1-2. Hence, Plaintiff concludes that the statute of limitations should have been tolled from the date that Plaintiff received that opinion until the lawsuit was refiled in April 1999.

The precise wording of the Order requires Plaintiff to refile his complaint once he is "declared competent to stand trial" (in the Oakland County criminal proceeding), not, as Plaintiff suggests, when he is declared competent to proceed with his civil action. Moreover, Plaintiff's reliance on Mich. Comp. L. § 600.5851, which provides a grace period for

persons who are insane when an action accrues, is misplaced. There is no evidence before this Court that Plaintiff was insane when his action accrued; he was found incompetent to stand trial long after his action accrued.

Plaintiff's contention that he suffers from a psychological disability and that because he only recently became competent to handle his own affairs likewise fails to satisfy the conditions established in this Court's Order. Therefore, the disability finding, which entitles Plaintiff to social security benefits, provides no basis for his position that the statute of limitations does not bar his claims.

In addition, the Court finds that pursuant to E.D.Mich. L.R. 41.2, it is authorized to enter an order dismissing Defendant Bowen from this action. Plaintiff has failed to take any action with regard to Bowen, has not responded to the Court's show cause order and has not objected to that portion of the Report and Recommendation recommending dismissal.

Accordingly, the Court ADOPTS the Report and Recommendation in its entirety.

IV. CONCLUSION

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED that Defendant James Bowen is DISMISSED from this action for lack of prosecution.

/s/_____
GEORGE E. WOODS
UNITED STATES DISTRICT JUDGE

APPENDIX G

"Perjury"

(Fact and Statement)

Perkins and Boyce Criminal Law, 511 (3rd Ed. 1982)

Model Penal Code Subsection 241.1

262F.2d 788, 794

Plaintiff never claimed de novo error. The corrupt police court are as old as Babylon. Hindering prosecution is verifiable from Respondents' previous counsel De Augustino Patterson (Commissioner Patterson-at-large) and to the previous, untimely erroneous submittal; Oakland County police court's double handling and mishandling of cases is also verifiable by Federal Judge Tarnow back to Elder Judge Woods. Judge Wood's plain and simple errors are due to his education in Oakland County's Judiciary. Accessories after the fact do not present a criminally culpable problem; Petitioner will testify after civil damages are settled.

Past due civil damages = $29,720,000.

Historical Prospective

Oakland County is the second wealthiest county in America; which also prepays its one third of a billion dollars

property tax one year in advance, Oakland County recently gave Chrysler $40,000,000, Ford the Pontiac Silverdome for $55,000,000, and GM Corporation constant annual residual cash bounties.

Hippocratic Oath "Rock" 10% a month interest tribute upon justice signet.

OTHER CONTINGENCIES AND MINIMUM ACCEPTABLE ₳ 5,310,000.00 = LUMP SUM.

NO PRIOR LIENS OR ENCUMBRANCES ALLOWED.

REMOVAL OF JUDGE * MORRIS FORTHWITH FROM ANY AND ALL OAKLAND COUNTY COURT ACTION.

JUDGE MOISEEV SCHEDULE AND SALARY TO BE HALVED TO 2 DAYS A WEEK.

NO JOINT SOLICITATIONS, JOINT ADVERTISING, DOUBLE HANDLING OF COURT CASES OR FURTHER UNCONSTITUTIONAL ACTS BY ANY OAKLAND COUNTY JUDICIARY OR - TREBLE DAMAGES OF- ₳15,930,000.00 TO BE EXISED.

JURAT

ACCEPTANCE

* HIGHLAND PARK JUST REQUESTED GOV. ENGLER APPOINT A BUSINESS MGR. (HOME OF MORRIS)